

L BK0010 PG0324

C BK0011 PG0491

STATE MS.-DESOTO CO.

STATE MS.-DESOTO CO. *BC*
FILED *BC*

MAY 14 1 39 PM '03

MAY 14 12 59 PM '03 *BC*

**NOTICE OF MATERIALMEN, LABORERS,
ARCHITECTS, SURVEYORS, AND ENGINEERS LIEN
PURSUANT TO MISSISSIPPI CODE ANNOTATED
SECTION 85-7-131 ET SEQ.**

BK 10 PG 324
W.E. DAVIS CH. CLK.

BK 11 PG 491
W.E. DAVIS CH. CLK.

TO: John Scott, Agent
Millennium of Mississippi, LLC
1651 Dancy Blvd., Unit 5
Horn Lake, MS 38637

RE: PHASE 4 - PHYSICIANS' OFFICE BUILDING NUMBER 2,
Account No. 27917-07

Barge, Waggoner, Sumner & Cannon, Inc., 200 Clinton Ave., Suite 800, Huntsville, Alabama 35801, hereby serves notice on John Scott, the registered Agent for Millennium of Mississippi, LLC, via certified mail, return receipt requested, article no. 7000 1670 0010 7724 1401, of a Materialmen and Laborer's Lien under the provisions of Section 85-7-131, et seq., of the Mississippi Code of 1972 (as amended), and hereby notifies the said Millennium of Mississippi, LLC, of the claim of Barge, Waggoner, Sumner & Cannon, Inc., and in support thereof would show the following:

1. Millennium of Mississippi is the owner of the following property located in Desoto County, Mississippi:

2.87 acres located in the SW/4 & NW/4 Section 36 T1S, R8W, Plat Book 78/21, Desoto Commons, Non-Residential, Planned Unit Development;

and, more particularly described in Exhibit "D", which is attached hereto.
2. Barge, Waggoner, Sumner & Cannon, Inc., provided services to Millennium of Mississippi, LLC, for the development of the above referenced property, pursuant to a contract attached hereto as Exhibit "A", for which Barge, Waggoner, Sumner & Cannon, Inc., has not received payment. As a result thereof, Millennium of Mississippi, LLC, is currently indebted to Barge, Waggoner, Sumner & Cannon, Inc., in the amount of \$2,049.98 as evidenced by the statement of account attached as Exhibit "B", and referenced by account number 27917-07.
3. There is, at this time, an unpaid balance due to Barge, Waggoner, Sumner & Cannon, Inc., against Millennium of Mississippi, LLC, on account number 27917-07, the sum of \$2,049.98, as shown by the sworn affidavit of account attached hereto as Exhibit "C", which sum is currently due and unpaid.
4. Barge, Waggoner, Sumner & Cannon, Inc., is claiming the benefit of § 85-7-131 et seq., of Mississippi Code of 1972, as amended, under which Barge, Waggoner, Sumner & Cannon, Inc., is entitled to be paid for the services provided in the sum of \$2,049.98, plus all costs and attorney fees associated with this matter and Barge, Waggoner, Sumner & Cannon, Inc., is further entitled to a lien against the referenced property to secure payment of the above amounts.

5. The parties affected by this notice are:

Barge, Waggoner, Sumner & Cannon, Inc.
200 Clinton Ave., Suite 800
Huntsville, Alabama 35801

The People's Bank of Collierville, Tennessee

BancorpSouth Bank
Olive Branch, MS

FirstBank - Branch 60
Memphis, TN

This is the 6th day of May, 2003.

BARGE, WAGGONER,
SUMNER & CANNON, INC.

Prepared By: David W. Edwards

DAVID W. EDWARDS
David W. Edwards, P.C.
Attorney for Lien Holder
P.O. Box 326
Paris, Tennessee 38242
(731) 642-7580

State of Tennessee)
) ss
County of Henry)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 10th day of May, 2003, within my jurisdiction, the within named David W. Edwards, with whom I am personally acquainted and who acknowledged that he is the attorney for Barge, Waggoner, Sumner & Cannon, Inc., and that in said capacity executed the above and foregoing instrument, after having been duly authorized to do so.

Christina L. Salomon
NOTARY PUBLIC

My commission expires: MY COMMISSION EXPIRES
OCTOBER 27, 2003



BARGE, WAGGONER, SUMNER AND CANNON, INC.
PLANNERS

ENGINEERS • ARCHITECTS •

PROFESSIONAL SERVICES AGREEMENT

This agreement made as of March 25, 2002, between DeSoto County Development, L.L.C. (Client) and Barge, Waggoner, Sumner & Cannon, Inc. (BWSC) to perform professional services for the assignment described as follows:

Project: **DeSoto Commons P.D. - Phase 1, Parcel A-11**

Location: **DeSoto County, Horn Lake, MS**

Description of Project: **Physicians Office Building**

- I. **PROFESSIONAL SERVICES:** BWSC agrees to perform the following Basic Services under this contract:

Scope of Services:

Base Map:

Preliminary map showing proposed property boundaries for discussion purposes between the developer & future end users.

Preliminary Design Services:

These services will include orientation of the building footprint provided by the architects to get final site approval from all involved parties to continue with the Final Design Services.

Final Design Services:

Planning services required:

Preparing, submitting to the City agencies for approval, and recording a final plat. The plat, with conditions would be submitted to the City Planning agency for review and approval. We would attend all necessary meetings with the City Planner & with the City Engineering staff. Staff comments and conditions will be incorporated into the final plat. When all comments are satisfied, the final plat will be recorded.

EXHIBIT A

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Civil Engineering services which would result in the preparation on contract documents include the following:

- Existing Conditions/Demolition Plan
- Civil Site Layout Plan
- Site Landscaping Plan
- Grading & Drainage Plan
- Road plan & profile for Windchase stub to site
- Site Utility Plan
- Erosion Control Plan
- Storm Water Pollution Prevention Plan (SWPPP)
- Civil Details
- Civil Technical Specifications

Civil Engineering, as described herein, covers the services required to produce these contract documents. It also includes services required to obtain typical site engineering-related permits, such as State Department of Environment & Conservation, Construction Notice of Intent (CNOI) and Storm Water Pollution Prevention Permits (SWPPP). We would provide civil plans required for grading & drainage, or foundation building permits. The fee would not include work required to obtain unusual permits, such as permits to remove hazardous materials, or permits unrelated to the civil portion of this project.

Limited construction administration services would also be included in the civil engineering services. These construction services would be limited to those related to the civil aspects of the project. They would include review of contractor submittals and clarification of the civil engineering contract documents. Construction inspection is not a part of this proposal. It is our assumption that construction surveying will be provided by another party and therefore construction staking is not included as part of this proposal. Although, these additional services are available and can be provided upon your request, for an additional fee. If no survey is required it is also assumed that an electronic file of the existing conditions will be provided so that we may begin engineering immediately.

Irrigation design is not included in this proposal. Our recent experience indicates that most irrigation work is being bid by performance, whereby the contractor is responsible for the design.

Time Schedule:

Base Map

within 5 working days of receiving a signed contract

Preliminary Design

2 weeks after completion of base map

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Final Design
upon.

4 weeks of design after prelim. Design is agreed

Fee Schedule:

BWSC proposes to provide the above-described services for the following lump sum fees:

Base Map	\$1,000.00
Preliminary Design	\$1,200.00
Final Design	\$13,000.00
Total Services	\$15,500.00

Services not included in this proposal include:

1. Geo-technical investigation of the site
2. Wetlands delineation
3. Construction surveying
4. Landscape design

II. **COMPENSATION:** The compensation to be paid to BWSC for providing the requested services shall be:

_____ Cost Plus in accordance with the rate schedule attached as Exhibit "A" including applicable reimbursables.
Estimated Fee \$ _____ or Maximum Fee \$ _____

___x Lump Sum \$15,500.00

_____ Percentage of Construction Cost % Estimated Fee \$ _____

_____ Other (specify) _____

III. **PAYMENTS:** Billings for services rendered will be made *upon the closing of the construction loan* monthly and payment is due within thirty (30) days of receipt of invoice. Unless special arrangements are made, a finance charge of 1 1/2% per month will be added to unpaid balances more than thirty (30) days old.

IV. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated without cause by either party upon ten (10) days written notice. On termination by either Client or BWSC, Client shall pay

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BWSC with respect to any services performed to the date of termination (including all reimbursable expenses incurred).

- V. REUSE OF DOCUMENTS:** All documents including Drawings and Specifications prepared by **BWSC** pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by **Client** or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by **BWSC** for the specific purpose intended will be at **Client's** sole risk and without liability or legal exposure to **BWSC**; and **Client** shall indemnify and hold harmless **BWSC** from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle **BWSC** to further compensation at rates to be agreed upon by **Client** and **BWSC**.
- VI. ACCESS TO THE SITE/JOB SITE SAFETY:** Unless otherwise stated, **BWSC** will have access to the site for activities necessary for the performance of the services. The **Client** understands that **BWSC** is not responsible, in any way, for the means, methods, sequence, procedures, techniques, scheduling of construction, or jobsite safety. **BWSC** will not be responsible for any losses or injuries that occur at the Project site.
- VII. INDEMNIFICATIONS:** If any claim is brought against either the **Client** or **BWSC** by any third party, relating in whole or in part to the negligence of the **Client** or **BWSC**, each party shall indemnify the other against any loss or judgement, including attorneys' fees and costs, to the extent that such loss or expense is caused by the party's negligence.
- VIII. INSURANCE:** **BWSC** shall secure and endeavor to maintain such insurance as will protect **BWSC** from claims of negligence, bodily injury, death, or property damage which may arise from the performance of services under this Agreement.
- IX. RISK ALLOCATION:** In recognition of the relative risks, rewards and benefits of the project to both the **Client** and **BWSC**, the risks have been allocated such that the **Client** agrees that, to the fullest extent permitted by law, **BWSC's** total liability to the **Client** for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from cause or causes, shall not exceed the amount of our fee or Twenty five Thousand (\$25,000) dollars, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.
- X. DISPUTES RESOLUTION:** It is agreed by both parties that all unsettled claims, counterclaims, disputes or other matters in question arising out of or related to this Agreement shall first be attempted to be resolved by mediation. This provision can be waived by the mutual consent of the parties, or by either party

if its rights would be irrevocably prejudiced by a delay in initiating arbitration or the right to file a lawsuit. C BK0011PG0197

- XI. **OPINIONS OF CONSTRUCTION COST:** Any opinion of probable construction cost prepared by **BWSC** represents **BWSC's** judgement as design professionals and is supplied for general guidance of the **Client**. Since **BWSC** has no control over the construction marketplace, **BWSC** does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to **Client**.
- XII. **GOVERNING LAW:** Unless otherwise specified within this Agreement, this Agreement shall be governed by the Law of the State of Mississippi.

DeSoto County Development, L.L.C.

By: 

Title: Managing Member

Address: _____

Barge, Waggoner, Sumner &
Cannon, Inc.

By: 

Title: Senior Civil Engineer

Address: 200 Clinton Ave, Suite 800.

Huntsville, AL 35801

COPY
INVOICE

Dr. Whitney Slade
Millennium of Mississippi, L.L.C.
1651 Dancy Boulevard, Suite 5
Horn Lake MS 38637

Invoice No. 1
June 6, 2002
Project # 27917-07/JRH

RE: 27917-04 DeSoto Commons, P.D.
Phase 4 -Physicians' Office Building Number 2

For Professional Services Rendered Through May 29, 2002:

Project Engineer – 19.5 Hours @ \$90.00	\$ 1,755.00	
Total		\$ 1,755.00
Reimbursables:		
Meals	\$ 36.52	
Mileage	180.00	
Travel - Lodging	78.46	
Total	\$ 294.98	\$ 294.98
Total Amount Invoiced To Date		\$ 2,049.98
Less Previous Amount Invoiced		\$ -0-
Total Amount Of This Invoice		\$ 2,049.98

EXHIBIT B

Exhibit "C"

AFFIDAVIT OF ACCOUNT (27917-07)

State of Tennessee)
) ss
 County of Davidson)

I, the undersigned, being duly sworn, deposes and says:

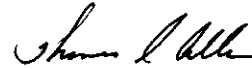
1. I am the agent of Barge, Waggoner, Sumner & Cannon, Inc., authorized to make this sworn affidavit of account on behalf of Barge, Waggoner, Sumner & Cannon, Inc.;

2. The account, designated by account number 27917-07, attached hereto as EXHIBIT "A", and each item of such account is, within the knowledge of affiant, just, true, and correct;

3. The claim and demand of Barge, Waggoner, Sumner & Cannon, Inc., against Millennium of Mississippi, LLC, as shown by the attached account is just, due, and unpaid;

4. All just and lawful offsets, payments, and credits have been allowed; and,

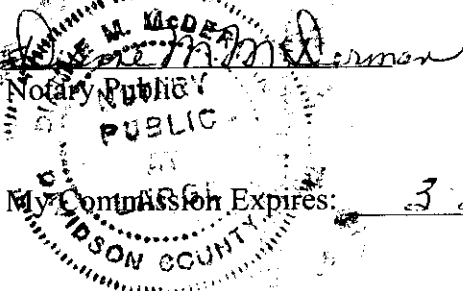
5. There is now due to Barge, Waggoner, Sumner & Cannon, Inc., against Millennium of Mississippi, LLC, on account number 27917-07, the sum of \$2,049.98, plus interest on such amount at the contract rate as allowed by law.



Thomas A. Allen

State of Tennessee)
) ss
 County of Davidson)

Personally appeared before me, the undersigned authority in and for the above named county and state, on this 6th day of March, 2003, within my jurisdiction, the within named Thomas A. Allen, having been duly sworn by me, and who acknowledged that she is an agent of Barge, Waggoner, Sumner & Cannon, Inc., a corporation, and that for and on behalf of the corporation, and as its act and deed she executed the above and foregoing instrument, after first having been duly authorized by the corporation so to do.



PHASE 4, LOT 3
PARCEL A-10
DESOTO COMMONS PUD-N
2.97 ACRES

ALL THAT PART OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 8 WEST, DESOTO COUNTY, MISSISSIPPI, PARTICULARLY DESCRIBED AS COMMENCING AT THE N.W. CORNER OF SECTION 36. THENCE SOUTH 1930.87 FEET. THENCE EAST 4.10 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LOT. SAID POINT OF BEGINNING IS FURTHER DESCRIBED AS BEING LOCATED ON THE SOUTHERN R.O.W. OF WINCHASE B'LVD:

THENCE NORTH 50 DEGREES, 06 MINUTES, 57 SECONDS EAST, 312.02 FEET;

THENCE NORTH 40 DEGREES, 19 MINUTES, 23 SECONDS WEST, 222.85 FEET;

THENCE NORTH 04 DEGREES, 32 MINUTES, 29 SECONDS WEST, 291.79 FEET;

THENCE SOUTH 85 DEGREES, 27 MINUTES, 31 SECONDS WEST, 300.00 FEET TO THE SOUTHERN R.O.W. OF WINCHASE B'LVD;

THENCE ALONG SAID R.O.W. SOUTH 04 DEGREES, 32 MINUTES, 29 SECONDS EAST TO THE P.C. OF A CURVE TO THE LEFT HAVING A RADIUS OF 446.00 FEET;

THENCE ALONG SAID R.O.W. AND ARC OF SAID CURVE, 228.00 FEET TO THE P.T.;

THENCE CONTINUING ALONG SAID R.O.W. SOUTH 39 DEGREES, 47 MINUTES, 30 SECONDS EAST, 5.26 FEET TO THE POINT OF BEGINNING, CONTAINING 2.97 ACRES, MORE OR LESS.

THE ABOVE LOT IS SUBJECT TO R.O.W.'S AND EASEMENTS OF RECORD.

Exhibit "D"

AFFIDAVIT OF NOTICE PURSUANT TO
MISSISSIPPI CODE ANN. § 85-7-197(2)

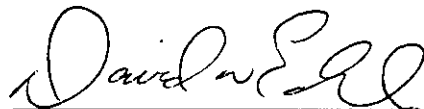
State of Tennessee)
) ss
 County of Henry)

I, David W. Edwards, being duly sworn, deposes and says:

I am the attorney for Barge, Waggoner, Sumner & Cannon, Inc., and I have this day served notice on John Scott, the registered agent for Millennium of Mississippi, LLC, by mailing, via certified mail, return receipt requested, article no. 7000 1670 0010 7724 1401, a true and correct copy of the above and foregoing NOTICE OF MATERIALMEN, LABORERS, ARCHITECTS, SURVEYORS, AND ENGINEERS LIEN addressed to the following:

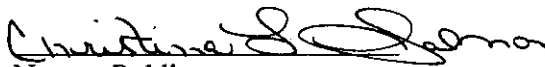
John Scott, Agent
 Millennium of Mississippi, LLC
 1651 Dancy Blvd., Unit 5
 Horn Lake, MS 38637

on this the 6th day of May, 2003.


 David W. Edwards

State of Tennessee)
) ss
 County of Henry)

Personally appeared before me, the undersigned authority in and for the above named county and state, on this 6th day of May, 2003, within my jurisdiction, the within named David W. Edwards, having been duly sworn by me, and who acknowledged that he is the attorney for Barge, Waggoner, Sumner & Cannon, Inc., a corporation, and that for and on behalf of the corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by the corporation so to do.


 Notary Public

MY COMMISSION EXPIRES
OCTOBER 27, 2003

My Commission Expires: _____

